# RECENT CASE NOTES

BANKRUPTCY—PROVABLE CLAIMS—UNLIQUIDATED DAMAGES FOR FRAUD OF PARTNERS.—Through the fraud of its agent, a partnership sold to the petitioners drafts and checks which were not paid. The drafts and checks were not signed nor negotiated by either partner but their proceeds were used in the partnership business. The petitioners' claim against the bankrupt firm was proved and allowed. They also filed proof of claim for damages due to the fraud against each partner's individual bankrupt estate. *Held,* that the claim against the individual estates was properly disallowed, because claims based on mere torts are not provable, and double proof is not permissible when the partners individually receive no unjust enrichment beyond what occurs to the firm. *Schall et al. v. Camors et al.* (Jan. 5, 1920) U. S. Sup. Ct. Oct. Term. 1919, No. 84.

This important decision by the court of final authority puts to rest two much mooted controversies. The first was whether clause b of section 63 of the Bankruptcy Act merely provides the procedure for liquidating claims of the classes declared provable by clause a, or whether it had the further effect of admitting all unliquidated claims including torts. The federal courts generally have adopted the former view. See Collier, *Bankruptcy* (11th ed. 1917) 976. But the opposing argument, strengthened by the contention that the 1903 amendment to section 17 amounts to a legislative construction that tort claims are provable, was somewhat difficult to meet. *Cf. Brown v. United Button Co.* (1906, C. C. A. 3d) 149 Fed. 48. The opinion in the instant case leaves nothing further to be said on the subject. Of course, where the tort may be waived and an action brought in quasi-contract, a provable claim exists. *Tindle v. Birkett* (1906) 205 U. S. 183, 27 Sup. Ct. 493. The second mooted point was whether, when the tort was waived, double proof could be made against the partnership and the individual partners' bankrupt estates on the theory of joint and several liability. *Cf. In re Coe* (1910, C. C. A. 2d) 183 Fed. 745 (allowing double proof); *cf. Reynolds v. New York Trust Co.* (1911, C. C. A. 1st) 188 Fed. 611 (disallowing it). If, as in the present case, the individual partners receive no enrichment beyond that which accrued to the firm, the rejection of double proof appears clearly to accord with the distinction between firm and individual debts recognized by section 5. Whether proof against the partnership would preclude a suit in tort against the partners is a question upon which the authorities are not in accord. See (1919) 28 YALE LAW JOURNAL, 409.

CORPORATIONS—MUNICIPAL CORPORATIONS—INVALID BONDS—LIABILITIES TO HOLDERS.—A city made contracts for improvements and issued bonds under a statute which was later held unconstitutional. The defendant purchased some of these bonds in good faith and sold them to the plaintiff, who sued the defendant to recover the purchase price. The city was joined as a party defendant. *Held,* that the plaintiff should recover from the defendant; and that the defendant should recover from the city. *City of Henderson v. Redman* (1919, Ky.) 214 S. W. 809.

Bonds issued by a municipal corporation under an unconstitutional statute are invalid. *Norton v. Shelby County* (1886) 118 U. S. 425, 6 Sup. Ct. 1121; *Wilkes County v. Call* (1898) 123 N. C. 308, 31 S. E. 481. If the municipality has no power to make the attempted contract, and if a recovery of the benefits received would increase the burden of the taxpayers, no recovery can be had, either under the contract or in quasi-contract. *McDonald v. Mayor, etc., of*